

June 22, 1994

Federal Communications Commission  
The Secretary  
1919 M. Street N.W.  
Washington, D.C. 20554

100-241,111

100-241,111

RE: M M Docket No. 93-320

FCC MAIL ROOM

Dear Secretary:

James M. Kenyon, representing The Eden Broadcast Group of Ellison Bay, Wisconsin respectfully appeals the Commission's 4-21-94 decision denying the allotment of Channel 223A to Ellison Bay, Wisconsin (RM-88407 para 4).

RE: Report and Order  
M M Docket No. 93-320  
RM - 8407

1. The petitioner regrets that the comments were filed late.
2. The general information provided regarding the community, though brief, was correct.
3. The petitioner will provide additional evidence regarding "community" in an effort to establish that Ellison Bay meets the Federal Communications Commission acceptable criteria.

Community businesses with addresses: (partial list)

Ellison Bay Women's Club  
Ellison Bay, WI 54210

Newport State Park  
475 S. Newport Road  
Ellison Bay, WI 54210

WPNE Broadcast Tower(Channel 55)  
UWGB  
Green Bay, WI

Ellison Bay Men's Club  
Ellison Bay, WI 54210

Pioneer Store  
Hwy 42  
Ellison Bay, WI 54210

Ellison Bay Mobil  
Hwy 42  
Ellison Bay, WI 54210

Liberty Grove Fire Department  
Garrett Bay Road  
Ellison Bay, WI 54210

U.S. Post Office  
Garrett Bay Road  
Ellison Bay, WI 54210

Shepard of the Bay Lutheran Church  
Hwy 42  
Ellison Bay, WI 54210

Viking Restaurant  
Hwy 42  
Ellison Bay, WI 54210

Hillside Supper Club & Motel  
Hwy 42  
Ellison Bay, WI 54210

Voight's Supper Club  
Hwy 42  
Ellison Bay, WI 54210

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The Berch Branch & Berch Tree  
12030 Garrett Bay Road  
Ellison Bay, WI 54210

Caxton Books  
Hwy 42  
Ellison Bay, WI 54210

Lee Telfer Land Surveyor  
12210 Garrett Bay Road  
Ellison Bay, WI 54210

Cedar Grove Cottages  
Ellison Bay, WI 54210

Fitzgerald Construction Company  
Old Stage Road  
Ellison Bay, WI 54210

Wagon Trail Resort &  
Conference Center  
1041 Hwy ZZ  
Ellison Bay, WI 54210

Newport Gas Station  
Hwy 42  
Ellison Bay, WI 54210

Shippa-Hoy Charter Service  
12689 Hwy 42  
Ellison Bay, WI 54210

Olde Orchard Antique Mall  
7381 Hwy 42  
Ellison Bay, WI 54210

Grand View Motel  
Hwy 42  
Ellison Bay, WI 54210

Michael Till-Planner & Engineer  
12002 Hwy 42  
Ellison Bay, WI 54210

Garden of Eden Orchard  
1161 Hwy 42  
Ellison Bay, WI 54210

Sturgeon Bay Sand & Gravel  
11159 Mink River Road  
Ellison Bay, WI 54210

Fashion Emporium  
12033 Hwy 42  
Ellison Bay, WI 54210

Parkside Motel  
Hwy 42  
Ellison Bay, WI 54210

Norland Resort  
Hwy 42  
Ellison Bay, WI 54210

Woodrow Engineering  
11644 Hwy 42  
Ellison Bay, WI 54210

Baylake Bank  
Hwy 42  
Ellison Bay, WI 54210

The Clearing School  
for the Arts  
12183 Garrett Bay Road  
Ellison Bay, WI 54210

Town Hall & Garage  
11161 Old Stage Road  
Ellison Bay, WI 54210

Door County Commercial  
Fisherman's Co-op  
Hwy 42  
Ellison Bay, WI 54210

Bethel Baptist Church  
852 Europe Bay Road  
Ellison Bay, WI 54210

Dr. Joan Traver  
RFD 1  
Ellison Bay, WI 54210

Griffin Inn  
11976 Mink River Road  
Ellison Bay, WI 54210

Hockers Excavating  
Old Stage Road  
Ellison Bay, WI 54210

Aaple Ridge Locksmith  
12210 Garrett Bay Road  
Ellison Bay, WI 54210


Honey Bee Cleaning Service  
12190 Badger Road  
Ellison Bay, WI 54210

Nor-Dor Construction  
11159 Mink River Road  
Ellison Bay, WI 54210

Ellison Bay Information Center  
Hwy 42  
Ellison Bay, WI 54210

4. The petitioner asks that the Federal Communications Commission reconsider allocating Channel 223A to Ellison Bay, Wisconsin. In that case, The Eden Broadcast Group would apply for use of the channel immediately.
5. No response necessary.
6. No response necessary.

Sincerely,

  
James M. Kenyon  
Eden Broadcast Group  
1161 Hwy 42  
Ellison Bay, WI 54210  
(414) 854-4742

cc: Doug Vernier  
Broadcast Consultant  
1600 Picturesque Drive  
Cedar Falls, Iowa 50613  
(319) 266-8402

Footnotes:

1. Four major communication towers could have been located in Baileys Harbor, Egg Harbor, Ephraim, Fish Creek, Gills Rock, Sister Bay, or Washington Island. They were not. They were located adjacent to Highway 42 and Old Stage Road, Ellison Bay, Wisconsin.
2. The summer population in northern door county region (Townships of Washington Island and Liberty Grove) exceeds 30,000.
3. The current equalized value of Washington Island: \$88,598,100. The current equalized value of the Town of Liberty Grove: \$243,158,200. Ellison Bay is the geographical center for these two townships! Both townships are directly linked to Division Four Wisconsin Public School Districts (pre-school through grade 12) (two high schools).

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 93-320

In the Matter of

Amendment of Section 73.202(b), RM-8407  
Table of Allotments,  
FM Broadcast Stations.  
(Ellison Bay, Wisconsin)

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: April 21, 1994;

Released: May 24, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC Rcd 121 (1994), issued in response to a petition filed by Eden Broadcast Group ("petitioner"), proposing the allotment of Channel 223A to Ellison Bay, Wisconsin, as that community's first local broadcast service. Petitioner submitted late-filed comments reiterating its intention to apply for the channel, if allotted.<sup>1</sup> No other comments were received.

2. In the *Notice*, petitioner was requested to furnish sufficient information to support a finding that Ellison Bay is a community for allotment purposes since it is not listed in the U.S. Census. Petitioner was requested to provide specific information as to the social, economic, cultural or governmental indicia to determine whether Ellison Bay is a community for allotment purposes. In response, petitioner states that the Village of Ellison Bay, in the Town of Liberty Grove, has a post office, several gift shops, two supper clubs, a marina, grocery store, clothing store and furniture store, two men's clubs and a woman's club and a branch bank. Petitioner notes that with the exception of the branch bank, all the businesses are open year round. Further, petitioner states that Ellison Bay is part of the division four Gibraltar Area School system with schools located in Fish Creek and Washington Island.

3. Based on the totality of the evidence submitted by petitioner, we believe it has failed to establish that Ellison Bay qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel. See *Mokelumme Hill, California*, 4 FCC Rcd 7108 (1989). While petitioner has alleged that there are some local businesses, churches and schools, it has not specifically identified these entities with addresses or shown that they are intended to serve Ellison Bay, as opposed to other areas. This is a critical deficiency because, in past cases, we have rejected claims of community status where a nexus

has not been shown between the political, social and commercial organizations and the community in question. See *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991), and cases cited therein. We note that Ellison Bay can be located on a state map and according to the 1994 *Rand McNally Commercial Atlas*, Ellison Bay has a post office and population of 370 people. However, we believe that the record in this proceeding is insufficient to find that Ellison Bay is a community for allotment purposes. Therefore, we will not allot Channel 223A to Ellison Bay, Wisconsin.

4. IT IS FURTHER ORDERED. That the request of Eden Broadcast Group for the allotment of Channel 223A to Ellison Bay, Wisconsin (RM-8407) IS DENIED.

5. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>1</sup> In conformance with the Commission's general policy of accepting late-filed comments where the proceeding is uncontested, we will accept petitioner's comments for the pur-

pose of permitting a continuing expression of interest in Channel 223A at Ellison Bay. See, *Santa Isabel, Puerto Rico*, 3 FCC Rcd 2335 (1988).